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## DEPARTMENT OF STATE

Public Notice: 9791

### **30-Day Notice of Proposed Information Collection: Disclosure of Violations of the Arms Export Control Act**

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to **[the FR will insert date 30 days from date of publication in the *Federal Register*].**

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- **E-mail:** [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- **Fax:** 202-395-5806. Attention: Desk Officer for Department of State.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Danielle Canfield, Directorate of Defense Trade Controls, Department of State, who may be reached at CanfieldDP@state.gov.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Disclosure of Information Related to Potential Violations of the Arms Export Control Act
- *OMB Control Number:* 1405-0179
- *Type of Request:* Revision of a Currently Approved Collection
- *Originating Office:* T/PM/DDTC
- *Form Number:* DS-7787
- *Respondents:* Individuals and companies engaged in the business of manufacturing, exporting, or temporarily importing defense hardware or defense technical data; furnishing defense services; or brokering.
- *Estimated Number of Respondents:* 1500
- *Estimated Number of Responses:* 1500
- *Average Time Per Response:* 10 hours
- *Total Estimated Burden Time:* 15,000 hours
- *Frequency:* On occasion
- *Obligation to Respond:* Voluntary, unless required under ITAR Sections 126.1, 126.16, 126.17, 123.17.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:*

The Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs, U.S. Department of State, in accordance with the Arms Export Control Act (AECA) (22 U.S.C. 2751 et seq.) and the AECA's implementing regulations, the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), has the principal missions of taking final action on license applications and other requests for defense trade transactions via commercial channels, ensuring compliance with the statute and regulations, and collecting various types of reports. By statute, Executive Order, regulation, and delegation of authority, DDTC is charged with controlling the export and temporary import of defense articles and the provision of defense services covered by the U.S. Munitions List, and the brokering thereof.

In accordance with ITAR Part 127, DDTC maintains a robust program to ensure compliance with the AECA and ITAR. As a part of this program, DDTC encourages the voluntary disclosure of potential violations of the AECA, ITAR, and any regulation, order, or authorization issued thereunder. The information disclosed is analyzed to determine whether administrative action concerning any violation is warranted; the voluntary nature of such a disclosure may be considered a mitigating factor in determining the administrative penalties, if any, which may be imposed. Failure to report a violation may result in circumstances detrimental to U.S. national security and foreign policy interests and will be considered as an adverse factor in determining the appropriate disposition of such violations. Also, the activity in question might merit referral to the Department of Justice for consideration of whether criminal prosecution is warranted. In such cases, DDTC will notify the Department of Justice of the voluntary nature of the disclosure, but the Department of Justice is not required to give that fact any weight.

The ITAR also imposes a duty to notify DDTC of potential violations of the AECA and ITAR in certain instances. In accordance with ITAR §§ 123.17(j), 126.1(e)(2), 126.16(h)(8) and (n), and 127.17(h)(8) and (n), any person involved in or with knowledge of activities identified or prohibited by these sections must notify DDTC of the violations or produce documents and information, respectively.

In certain circumstances, DDTC may also request or direct a registrant or another party to disclose details about a particular transaction or program based on information it receives from partner federal agencies or other sources. The information required for a directed disclosure is largely the same as that requested in a voluntary disclosure and

must be sufficient for DDTC to determine the precise nature of the violation, the circumstances surrounding it, and any remediation efforts that have been put in place.

ITAR §127.12 enunciates the information which should accompany a disclosure. Historically, respondents to this information collection submitted their disclosures to DDTC in writing via hard copy documentation. However, as part of an IT modernization project designed to streamline the collection and use of information by DDTC, a form has been developed for the submission of disclosures. This will allow both DDTC and respondents submitting a disclosure to more easily track and analyze submissions. This method of submission is discussed in detail below.

#### Response to Public Comments

On June 20, 2016, DDTC published a Federal Register Notice requesting initial public comments on the proposed disclosure form, DS-7787 “Disclosure of Violations of the Arms Export Control Act.” 81 FR 39994. DDTC received nine comments in response to this request, summarized below along with DDTC’s responses:

Several commenters opined that the DS-7787 form should merely function as a cover sheet for disclosure submissions in order to allow submitters to use a more narrative format to notify DDTC of potential violations. DDTC notes that the intended use of the form is to utilize uniform data fields for greater search and analytics capabilities and readability in the case management system; the unlimited-character text boxes associated with each data field will allow ample room for narratives to be included in the submission and therefore this comment was not accepted. DDTC does recognize, however, that the need exists for a mechanism to allow submitters to explain ancillary information, and will add an “Additional Relevant Information” text box and the ability

to upload supporting documentation to the form. However, DDTC stresses that this does not absolve submitters of the responsibility to use the form as the primary vehicle for declaring violations.

Other comments concerned the burden associated with the form, which DDTC reasons to be an average of 10 hours per submission. These commenters argued that a 10-hour burden is inadequate to capture the amount of effort that is required by certain complex disclosures; DDTC appreciates these comments but replies that 10 hours is an average figure, and while some disclosures are very complex, the vast majority of disclosures declared on an annual basis are discrete instances which take far less than 10 hours per response. Therefore, DDTC believes 10 hours to be an accurate representation of the total average burden per response.

Several commenters also requested that the instructions be revised to, among others, define which fields of the form are mandatory; explain how to determine the number of violations; clarify what information is required for “related disclosures,” “discovery date,” and “relevant Department of State license(s) or authorization(s)”; describe the disclosure method for companies and individuals under a consent agreement or similar reporting arrangement; and describe the method of submission of the form. DDTC appreciates all of these comments and has re-worked the instructions based on this feedback; the instructions are posted and available for review along with the revised form on DDTC’s website at [www.pmdrtc.state.gov](http://www.pmdrtc.state.gov).

Another commenter noted that the form does not discuss how to make a disclosure that involves classified information. DDTC has addressed this guidance in the revised instructions and stresses that classified information should never be included on

the DS-7787. Similarly, guidance on making a disclosure related to a country proscribed by ITAR § 126.1 has also been included in the instructions.

Multiple commenters also asked that the form be updated to accept submissions from third parties such as an outside counsel. DDTC notes that the ITAR requires an empowered official, as defined in ITAR § 120.25, to certify the disclosure, but that outside counsel may be listed as a point-of-contact for the submission; this option has been added to the form.

In a similar vein, some commenters requested clarification on how to disclose violations that involve a sub-licensee or subcontractor, and also how non-U.S. entities (e.g. authorized end-users or foreign consignees) will submit disclosures. DDTC replies that sub-licensees and subcontractors should be included as involved parties on the form; if the violation of the sub-licensee or subcontractor related to one of the discloser's authorizations, the discloser may have responsibility for the violation and it should be reported as such. If the respondent is reporting a violation of a subcontractor or sub-licensee that is not related to any of the respondent's authorizations, the option "Third party disclosure" should be selected. Non-U.S. entities will be required to create a unique username and password to access the case management system and file a disclosure directly.

One commenter also requested that DDTC work with its counterpart bureau in the Department of Commerce to develop a joint disclosure form. The commenter argued that since the Obama Administration's Export Control Reform (ECR) initiative has transferred oversight of dozens of commodities from the U.S. Munitions List (USML) to the Department of Commerce's Export Administration Regulations (EAR), a joint form

would capture instances where a violation occurred prior to a commodity being moved from the USML to the EAR. DDTC replies that the DS-7787 will exist beyond the ECR initiative, and submitters are required to explain the violation in detail on the form, during which time any ECR distinctions should be made.

Similarly, several commenters remarked that DDTC should include a field to allow respondents to include “mitigating information” regarding the particular matter they are disclosing. DDTC notes that the form, as written, contains all of the information required by ITAR § 127.12. Additionally, as addressed above, DDTC has added a field for additional relevant information on the form, and notes that this would be the appropriate place to enter mitigating and/or aggravating information that does not more properly fit into another field. The respondent is encouraged to provide as much detail of remedial measures and mitigating factors as they are able throughout the existing fields; however, determinations of exactly what constitutes “mitigating information” are made solely by DDTC; therefore, such a separate field will not be added to the form.

One commenter also requested DDTC to address the information protection and data security elements of the case management system. Recognizing the sensitivity of the data submitted in a disclosure, the system will meet all current government standards for data security and the Privacy Act of 1974. Individual users will also be required to create a unique username and password to access the system and submit information over an encrypted connection. Similarly, DDTC will protect information from public disclosure to the extent permitted by law; DDTC encourages submitters to clearly mark proprietary information in accordance with the Department of State guidelines at 22 CFR 171.12.



One commenter requested that the form include a question to declare whether a disclosure involves Major Defense Equipment (MDE), which DDTC has incorporated into the form.

*Methodology:*

This information will be collected by electronic submission. Respondents will be required to enroll in DDTC's online system and will be issued an appropriate credential based on the business the user will be transacting. Lower assurance matters (such as initial registration in the system) will require a secure username and password. Matters requiring higher assurance will require multi-factor credentials, such as a certificate based login.

Dated: November 21, 2016

**Anthony M. Dearth**  
**Managing Director, Acting**  
**Directorate of Defense Trade Controls,**  
**Department of State.**

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